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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

AFEI:002US

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on May 31, 2006

Signature

Typed or printed name Mark T. Garrett

Application Number

10/077,618

Filed

February 15, 2002

First Named Inventor

Alexander J. Fiegl

Art Unit

3731

Examiner

Darwin P. Erez

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒

attorney or agent of record.

Registration number 44,699☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

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May 31, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Arguments in Support of Pre-Appeal Brief Request for Review for 10/077,618

I. The Anticipation Rejection of Independent Claims 1, 31, 64 and 70 and Their Rejected Dependent Claims over Ainslie Is Not Factually Supported.

Each of the rejected independent claims recites a needle connected to a length of suture. The Office asserts that the flexible cable 10 disclosed in Ainslie meets the claimed suture limitation. Flexible cable 10 is shown in both FIGS. 12 and 13 of Ainslie.

Ainslie's flexible cable 10 is not a suture by any reasonable standard of claim interpretation. A suture is something that is capable of stitching two portions of body tissue together; it is the material that is capable of actually holding the two tissue portions together. There is no teaching or suggestion in Ainslie that flexible cable 10 possesses such a capability. Furthermore, the Office provides no evidence that one of ordinary skill in the art—giving the term suture its broadest reasonable interpretation consistent with Applicant's specification—would read the term "suture" broadly enough to cover Ainslie's flexible cable 10.

For these reasons, the Office has not carried its burden of establishing a *prima facie* case of anticipation and should withdrawn the rejections.